

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

October 31, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 15, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I am writing on behalf of a client of mine (Company T) to request a taxability ruling pertaining to the taxability of their activities in the State of Illinois.

Company T is not registered in the State of Illinois, does not maintain a place of business in Illinois, does not have inventory in Illinois, does not deliver merchandise into Illinois and is not under audit or investigation by the State of Illinois. However, Company T does attend trade shows in Illinois.

FACTS:

Company T is a service company within the tradeshow industry. Company T provides two distinct services, Tradeshow Registration and Exhibitor Services, to their clients located in Illinois and throughout the United States.

- I. Tradeshow registration: This service involves getting data into the database for the tradeshow and getting data out of the database in order to provide attendees with credentials and show managers with reports. These functions occur before the tradeshow takes place, while the tradeshow is in progress and after the tradeshow ends.
 - a. Advance Registration (performed entirely outside the State of Illinois): During the advance registration period, there are three ways data is entered into the database. The newest, and rapidly becoming the most important, is web-based registration. Company T builds and hosts a registration web site for its clients. This allows the people attending the show to register in just a few minutes any time of the day or night. A second alternative is for Company T to receive the registration form

directly from the attendee via mail or fax. The information is then entered and checked by Company T's staff or by temporary data entry clerks as needed. The third alternative is for the client to gather the information, either by accepting the registration forms themselves and entering the information into a database, or more usually by using information from a membership or historical database. The client then gives Company T the information in electronic format and Company T electronically loads the data into the database for the appropriate trade show.

b. On-site Registration (performed in the tradeshow state): The vast majority of people register during the advance registration period, but depending on the size of the event, anywhere from a few hundred to thousands of people will wait until they get to the tradeshow to register. As part of the overall registration service, Company T will ship equipment to the venue at which the tradeshow is held. Company T personnel will then set up a registration system to handle the expected number of on-site registrants. While Company T's client actually hires the temporary staff directly, Company T trains the temporary staff to input the data and supervises the input process. In many cases, the people attending the show type their own data into the database under the supervision of Company T's trained staff, a practice known in the industry as self-registration. In any case, the registration system remains under Company T's direct control and supervision.

c. Provision of Reports, Confirmations, Badges, Etc. (predominately performed outside the State of Illinois): Company T provides standard and custom reports to tradeshow managers involving counts, financial information, demographic information, geographic information, etc. Company T also produces confirmations, name badges (to gain admittance to the tradeshow) and other credentials provided directly to attendees.

II. Exhibitor Services: These services can be either manual or electronic and assist exhibiting companies in gathering and organizing their sales leads generated at the tradeshow. Each attendee at the tradeshow has a badge which was provided by Company T. The badge has a bar code (which contains the attendee's registration information) and a unique identification number on it. Exhibitors want the registration information for the attendees who visit their respective exhibits, and Company T helps them efficiently gather that information.

a. Manual service (performed outside the State of Illinois): Some exhibitors choose to write down the unique ID number for each person they view as a potential sales lead. At the end of the trade show, the exhibitor gives the paper with all those numbers to Company T. The list of numbers is taken back to Company T's home state and Company T generates a report or data disk to send to the exhibitor which contains the registration information for the people represented by those numbers.

b. Electronic Service (performed in the tradeshow state): To expedite the gathering of the information and to increase the reliability of the data gathered, exhibitors can utilize bar code scanning equipment and

proprietary software provided by Company T to scan the badges of attendees they view as sales prospects. The scanning device includes a printer to provide a hard copy printout of the information, a floppy disk drive to save the information to a standard floppy disk and a pc card to save the information for archiving purposes. The exhibitors can then take their sales lead information with them when they leave the tradeshow rather than waiting for a report to be sent from Company T's home state. Company T personnel prepare and supervise the use of the equipment by the exhibitors at the tradeshow.

Ruling Request:

Please confirm whether Company T needs to be registered for ROT or SOT purposes in the State of Illinois and if ROT or SOT taxes should be collected or paid on any of its activities in the State of Illinois.

Thank you for your assistance in this matter. If you need additional information, please feel free to contact me.

As noted above, we are unable to make a binding determination in the context of a General Information Letter. Determinations regarding the subject of nexus are very fact specific and depend upon the amount and nature of activities performed in Illinois. The following information about nexus and Illinois sales is provided for your consideration. We hope it is useful for you in determining your client's Illinois sales tax responsibilities.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax (sales tax) on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers. If a vendor attends an Illinois trade show for a few days, and accepts purchase orders at that show, he would be making Illinois retail sales subject to Retailers' Occupation Tax. This would be true even if he later ships the goods from an out-of-State location to the Illinois customers.

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code Sec. 150.201(i), enclosed), must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code Sec. 150.801(c), enclosed. The retailer must collect and remit Use Tax to the State on behalf of his Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The U.S. Supreme Court in Quill v. North Dakota, 112 S. Ct. 1902 (1992) set forth guidelines for determining what nexus requirements must be met before a business is properly subject to a state's tax laws. Quill invoked a two-prong analysis consisting of 1) whether the Due Process Clause is satisfied, and 2) whether the Commerce Clause "substantial nexus" test is met before the state can impose tax collection responsibilities.

The due process test will be met if requiring the retailer to collect state sales tax is fundamentally fair to the retailer. If the retailer intentionally avails itself of the benefits of the taxing state's economic market, then due process is satisfied, Quill at 1910.

Notwithstanding the fact that due process has been met, a business must also have a physical presence in the taxing state in order for the "substantial nexus" test to be met under the Commerce Clause and before a state can impose tax collection responsibilities on an out-of-State retailer. A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative, and it is immaterial for tax purposes that the representative's presence is temporary.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales to Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on their purchase of the tangible personal property and have a duty to self-assess their Use Tax and pay it directly to the Illinois Department of Revenue.

You state that your client will ship equipment to the venue at which the tradeshow is held. The use of such equipment in Illinois will be subject to Illinois Use Tax because Section 3 of the Use Tax Act, 35 ILCS 105/3, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. However, taxpayers who have properly paid sales tax on tangible personal property that was due to another State will be allowed a "credit" against their Illinois Use Tax liability if they can demonstrate through documentation in their records that the tax was actually paid. This is because the Illinois Use Tax Act provides that in order to prevent actual or likely multistate taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State, 35 ILCS 105/3-55(d). In addition, a reasonable allowance for depreciation is allowed for out-of-State use. See 86 Ill. Adm. Code 150.110(c).

Sales of service in Illinois are not subject to Retailers' Occupation Tax liability. The provision of services as described in your letter that is accompanied by the transfer of tangible personal property to customers in Illinois, such as reports or badges, would be subject to liability under the Service Occupation Tax Act. Please note, however, information or data that is downloaded electronically, such as downloaded reports, books, newspapers or magazines, is not taxable because it does not constitute the transfer of tangible personal property but instead represents the transfer of intangibles. Please refer to 86 Ill. Adm. Code 130.2105(a)(3).

Where a business provides services that are accompanied with the transfer of tangible personal property, such transactions are generally subject to tax liability under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.140(l). If a business that provides services (known as a "Serviceman") attends an Illinois trade show for a few days, and transfers tangible personal property at that show to Illinois customers, he would be making Illinois sales of service subject to tax liability based upon the following principles.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax (SOT) liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1. separately stated selling price; 2. 50% of serviceman's entire bill; 3. SOT on his cost price if he is a registered de minimis serviceman; or, 4. Use Tax on his cost price if he is an unregistered de minimis serviceman that is not otherwise required to be registered under Section 2a of the Retailers'

Occupation Tax Act. Please see 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. A serviceman who incurs Service Occupation Tax on his selling price should provide Certificates of Resale to his suppliers when purchasing tangible personal property that will be transferred to service customers. Please refer to 86 Ill. Adm. Code 140.106, enclosed.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109, enclosed. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108, enclosed. These de minimis servicemen do not provide Certificates of Resale to suppliers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.

